



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

July 19, 2000

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Angela M. Buchanan
Buchanan For President, Inc.
8233 Old Courthouse Road, Suite 200
Vienna, Virginia 22182-3816

RE: MUR 5045

Dear Ms. Buchanan:

On July 11, 2000, the Federal Election Commission found that there is reason to believe that Buchanan for President, Inc. and you, as treasurer, violated 2 U.S.C. § 441a(f), 2 U.S.C. § 434(b)(8), and 2 U.S.C. § 434(b)(3)(A), provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending that pre-probable cause conciliation not be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

Angela M. Buchanan


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If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Albert Veldhuyzen, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Darryl R. Wold
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

cc: Patrick J. Buchanan

21-04-403-2991

**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Buchanan for President, Inc. and
Angela Buchanan, as Treasurer¹

MUR: 5045

I. GENERATION OF MATTER

Buchanan for President, Inc. ("Committee") was the authorized committee of Patrick J. Buchanan, a candidate for the Republican nomination for President in 1996. Mr. Buchanan and the Committee received \$10,983,475 in public funds under the Presidential Primary Matching Payment Account Act ("the Matching Payment Act"), 26 U.S.C. §§ 9031-9042. This matter was generated from information obtained in the course of conducting the audit of the Committee in accordance with 26 U.S.C. § 9038(a).

II. FACTUAL AND LEGAL ANALYSIS

A. LAW

A contribution is a gift, subscription, loan, advance, deposit of money, or anything of value made by a person for the purpose of influencing any election for federal office. 2 U.S.C. § 431(8)(A); 11 C.F.R. § 100.7(a)(1). It is unlawful for any corporation to make a contribution or expenditure in connection with any federal election to any political office. 2 U.S.C. § 441b(a). It is also unlawful for any candidate or political committee to accept or receive any contribution from a corporation. *Id.* Under the Federal Election Campaign Act of 1971, as amended, no person may make contributions to a candidate and his or her authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$1,000. 2 U.S.C.

¹ For the duration of the activities at issue in this Report, Scott B. Mackenzie served as Treasurer of Buchanan for President, Inc. An amended Statement of Organization was filed on November 17, 1999 listing Angela Buchanan as the Committee Treasurer.

§ 441a(a)(1)(A). Both incorporated and unincorporated commercial vendors² may extend credit to a candidate, a political committee, or another person on behalf of a candidate or political committee. However, an extension of credit is a contribution if it is not extended in the ordinary course of the commercial vendor's business and the terms are not substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. *See* 11 C.F.R. §§ 100.7(a)(4), 116.1(c), and 116.3.

An extension of credit includes but is not limited to the following:

- (1) Any agreement between the creditor and political committee that full payment is not due until after the creditor provides goods or services to the political committee;
- (2) Any agreement between the creditor and the political committee that the political committee will have additional time to pay the creditor beyond the previously agreed to due date; and
- (3) The failure of the political committee to make full payment to the creditor by a previously agreed to due date. 11 C.F.R. § 116.1(e).

In determining whether credit is extended in the ordinary course of business, the

Commission considers:

- (1) whether the commercial vendor followed its established procedures and its past practice in approving the extension of credit;
- (2) whether the commercial vendor received prompt payment in full if it previously extended credit to the same candidate or political committee; and
- (3) whether the extension of credit conformed to the usual and normal practice in the commercial vendor's trade or industry. 11 C.F.R. § 116.3(c).

² A commercial vendor is defined as "any person providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease, or provision of those goods and services." 11 C.F.R. § 116.1(c).

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Any failure to make a commercially reasonable attempt to collect debts will result in a contribution. 11 C.F.R. § 100.7(a)(4).

Commission regulations require a political committee to report the existence of a debt over \$500 to a vendor "as of the date on which the debt or obligation is incurred." 11 C.F.R. § 104.11(b). Furthermore, a commercial vendor may not forgive or settle a debt in full or in part without meeting the criteria of 11 C.F.R. §§ 116.4 and 116.8.

Political committees are required to disclose the identity of each person who contributes in excess of \$200 within the calendar year. 2 U.S.C. § 434(b)(3)(A). Specifically, committees shall report to the Commission the name, mailing address, occupation, and employer of the contributor. 2 U.S.C. § 431(13)(A).

The treasurer of a political committee is required to exercise his or her best efforts to obtain, maintain, and submit the required information. In the event the information is missing, the "best efforts" standard requires the treasurer to make "at least one effort after the receipt of the contribution to obtain the missing information." 11 C.F.R. § 104.7(b)(2); *see also* 2 U.S.C. § 432(h)(2)(i). A "best effort" consists of either a written request or an oral request documented in writing made to the contributor no later than 30 days after receipt of the contribution. 11 C.F.R. § 104.7(b)(2).³ The request for information cannot include "material on any other subject or any additional solicitation, except that it may include language solely thanking the contributor for the contribution." 11 C.F.R. § 104.7(b)(2). If contributor information is received after the contribution has been disclosed on a regularly scheduled report, the political committee

³ This regulation was in force at the time of the activity at issue in this matter. The Commission may require political committees to send a follow-up request to donors who fail to supply the necessary contributor information in response to the original solicitation. *See Republican Nat'l Comm. v. FEC*, 76 F.3d 400 (D.C. Cir. 1995).

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shall file an amended memo Schedule A listing all contributor identifications. 11 C.F.R. § 104.7(b)(4)(i)(A).

B. ANALYSIS

1. Apparent Prohibited Contribution Resulting from Extension of Credit by Commercial Vendor

On June 3, 1995, the Chairman of the Committee signed a contract with Scott B. Mackenzie, the Treasurer of the Committee and President of Matching Funds, Inc. (MFI), a business entity with its principal place of business in McLean, Virginia.⁴ Pursuant to the terms of the contract, MFI was to prepare and file all submissions for matching funds, among other duties.⁵ In exchange for Mr. Mackenzie's services through MFI, the Committee agreed to pay MFI a fee equal to 10% of the "Match Rate."⁶ MFI was to submit invoices on a monthly basis beginning January 1, 1996 and continuing until the termination of the contract. The Committee

⁴ Matching Funds, Inc. is not a registered corporation in Virginia, the District of Columbia, or Delaware. Additionally, although all businesses and individuals engaging in self-employment or home occupations in Fairfax County, Virginia are required to obtain a business license, none was issued to Scott Mackenzie or Matching Funds, Inc. during the contract period. For business license requirements, see *Fairfax County, Virginia Department of Tax Administration — Personal Property and Business License Division* (visited July 1, 1999) <http://www.co.fairfax.va.us/dta/business_tax.htm>.

⁵ The contract requires MFI to maximize the Committee's matching funds and provide the following:

- (a) Design and implementation of donor file software;
- (b) On site project manager who will oversee contribution processing, data entry, list maintenance, and matching funds operations;
- (c) Development of procedures to successfully accomplish the above tasks;
- (d) Full implementation of all matching funds processes;
- (e) Preparation and filing of Threshold Qualification Submission;
- (f) Preparation and filing of all Subsequent Submissions; and
- (g) Retention of all relevant records for FEC audit.

⁶ The "Match Rate" is "equal to the Matching Funds received and reported on line 16 of the FEC Disclosure Report divided by the Net Individual Contributions. The Net Individual Contributions are equal to the Individual Contributions as reported on line 17(a) less the Refunds of Individual Contributions as reported on line 28(a)." See Agreement between Matching Funds, Inc. and Buchanan for President, Inc. (June 3, 1995).

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was required, under the contract, to pay MFI from the matching funds generated or within 30 days, whichever was earlier.

On July 15, 1997, the Committee reported an outstanding debt to MFI of \$10,826 on its Second Quarter 1997 disclosure report. However, based on the analysis of the Audit Division, the Committee owed MFI an additional \$183,009. After the Audit staff provided its calculations to the Committee at the conference held at the conclusion of fieldwork, the Committee revised its estimate and reported an outstanding debt to MFI of \$183,009 on its Year-End 1997 disclosure report. The Audit staff then recommended, in the Exit Conference Memorandum ("ECM"), that the Committee file an Amended Schedule D-P to report the correct indebtedness at \$193,835 (\$183,009 + \$10,826), which it did on July 27, 1998. As of the Year-End 1999 disclosure report, the Committee still owed MFI \$165,835.

In the ECM, the Audit staff recommended that the Committee provide evidence detailing MFI's efforts to collect the indebtedness and to demonstrate that the extension of credit was in the ordinary course of business. *See* 11 C.F.R. § 100.7(a)(4). In its response to the Audit staff's recommendations, the Committee did not provide the information requested. Rather, it stated that it:

strongly disagrees that the facts presented in the Exit Memorandum evidence the receipt of a corporate contribution by the Committee. Political committees have never been deemed to receive contributions because they do not pay every vendor or employee in full on time. If committees did not acquire debts and obligations other than loans in the course of their activities, most of which are with corporations, no schedule of debts and obligations would be needed. MFI also requests that we state its strong objection to the suggestion that its actions constituted a corporate contribution to the Committee.

Based on the available information, MFI appears to have been acting as an unincorporated commercial vendor⁷ and it does not appear to have extended credit to the Committee in the ordinary course of its business under terms that are substantially similar to extensions of credit to nonpolitical debtors that are of similar risk and size of obligation. See 11 C.F.R. § 116.3(a). To date, the Committee and MFI have not provided any information suggesting an agreement to defer the contractual payments to MFI, though it is apparent that the Committee failed to make payments within 30 days as required by their contract. As a result, it appears that an extension of credit occurred according to the standard enunciated in 11 C.F.R. § 116.1(e)(3).

Furthermore, it does not appear that MFI followed its past practice in extending credit to the Committee. See 11 C.F.R. §§ 116.3(c)(1)-(3). From January 1996 to July 1996, MFI had invoiced the Committee on a monthly basis consistent with the contractual clause requiring monthly invoicing and payment. However, from August 1996 to April 1997, MFI did not invoice the Committee for services rendered totaling \$183,009.⁸ MFI's apparent deviation, starting in August 1996, from its past practice of invoicing the Committee on a monthly basis and its apparent lack of attempts to collect amounts due, such as sending follow-up letters, would

⁷ Because MFI does not currently appear to possess a valid incorporated status, it is appropriate to analyze its actions under 11 C.F.R. § 116.3(a) (unincorporated vendor). Given that the parties have ratified a contract and have otherwise treated each other as independent entities, the Commission is treating MFI as a separate business entity at this point.

⁸ Subsequent to the audit fieldwork, the Committee provided copies of MFI invoices to the Commission on February 18, 1998, covering the period from August 1996 to January 1997 in the total amount of \$181,252.94. The Audit staff had calculated MFI's fees for its services at \$780,345.72. Prior to the conclusion of fieldwork, MFI had billed the Committee \$597,336.45. According to the auditors, the additional invoices amounting to \$181,252.94 were not in the possession of the Committee and therefore not available for review by Audit staff prior to the end of fieldwork. At the end of fieldwork conference held on January 29, 1998, Scott Mackenzie told the Audit staff that he had the invoices for the remaining submissions in his office, but he did not provide any reason why they were never presented to the Committee.

tend to establish that the extension of credit in the amount of \$183,009 was not in the ordinary course of MFI's business.

Contrary to the Committee's contention that political committees "have never been deemed to receive contributions because they do not pay every vendor" on time, the Commission's regulations are clear that the failure to make contractually-mandated payments may be contributions. *See* 11 C.F.R. §§ 116.3(c)(3) and 100.7(a)(4). Scott Mackenzie's role as Treasurer of the Committee and as President of MFI casts doubt as to the nature of the relationship between the parties, and the lack of evidence of compliance with the terms of their contract and the non-existent attempts to collect the debt indicate that an excessive contribution may have occurred.⁹

Although the June 3, 1995 contract between the Committee and MFI specified that payment was due from the matching funds generated, the Committee failed to pay its debt. It also failed to report the existence of the debt (\$183,009) until after it was brought to its attention by the Audit staff. 11 C.F.R. § 104.11(b); *see also* 2 U.S.C. § 434(b)(8).

Because MFI is being analyzed as an unincorporated commercial vendor, the individual contribution limit of \$1,000 applies. 2 U.S.C. § 441a(a)(1)(A). By its apparent failure to collect its debts and continue its past invoicing practices, it appears that MFI contributed \$183,009 to the

⁹ In MUR 3494, the relationship between the parties cast doubt as to the arms length nature of the transaction. Congressional candidate McGowan owned a half-share in a motel, which did not attempt to collect a \$1,100 debt from McGowan's committee. The committee had rented rooms during the congressional campaign but did not pay the motel until approximately eight months later. There was no evidence that other occupants were permitted to go for such a duration without paying the motel. The Commission found reason to believe that the committee violated 2 U.S.C. § 441a(f) and the motel violated 2 U.S.C. § 441a(a)(1)(A), by the former accepting and the later making an excessive campaign contribution. In MUR 3632, the Commission found reason to believe that Brown for President knowingly accepted a corporate contribution from a vendor which extended credit to the Committee at unusually favorable terms and that the vendor's extension of credit constituted a prohibited contribution. *See* 2 U.S.C. § 441b. However, the Commission took no further action against either respondent in that matter. Unlike the present situation, the amounts involved were considerably less (\$29,493.95) and the vendor protested the Brown committee's failure to repay on time.

Committee resulting in an apparent excessive contribution of \$182,009 (\$183,009 - \$1,000). *See* 11 C.F.R. § 116.3(c) and 2 U.S.C. § 441a(a)(1)(A). As of the most current disclosure report (Year-End 1999), the Committee reported that the debt owed to MFI is \$165,835.¹⁰

The Commission found reason to believe that Buchanan for President, Inc. and Angela Buchanan, as Treasurer, violated 2 U.S.C. § 441a(f) by knowingly accepting an excessive contribution.

The Commission also found reason to believe that Buchanan for President, Inc. and Angela Buchanan, as Treasurer, violated 2 U.S.C. § 434(b)(8) by failing to disclose the outstanding debt owed to Matching Funds, Inc.

2. Disclosure of Occupation/Name of Employer

The Audit staff reviewed the Committee's disclosure reports and noted an omission rate of 58%, accounting for a total of \$2,422,604, for which contributors' occupations and names of employers were incomplete. *See* 2 U.S.C. § 431(13)(A), 11 C.F.R. § 104.7(b)(2). As a result, the Audit staff requested a copy of the Committee's procedures. Although the Committee's fundraising guidelines indicated that solicitation devices should request the contributor's occupation and name of employer, its requests for additional information were to qualify contributions for matching funds. There was no systematized method of obtaining missing contributor information for all contributions.¹¹ Furthermore, a review of the Committee's

¹⁰ The original debt amount of \$193,835 appears to have been reduced to \$165,835 as of the Year-End 1998 disclosure report. This amount has remained unchanged according to the Year-End 1999 disclosure report. However, the Audit Division could not confirm actual payments in the amount of \$28,000 (\$193,835 - \$165,835) from the Committee to MFI.

¹¹ In determining whether the political committee exercised "best efforts," the focus of the Commission is whether "the committee has in place a systematized method for complying with the Act's disclosure requirements." Explanation and Justification for 11 C.F.R. § 104.7, 45 Fed. Reg. 15,086 (Mar. 7, 1980).

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disclosure reports indicated that the Committee did not file amended schedules when it did receive additional information.

The Audit staff recommended in the Exit Conference Memorandum that the Committee provide evidence of "best efforts" to obtain, maintain and report the required information. In the absence of such information, the Audit staff recommended that the Committee contact all contributors with missing information and provide evidence of the contacts and any responses, and then file Amended Schedule A-P. The Committee complied, hiring the JVL Company to contact 2,699 donors. On August 20, 1998, the Committee filed a miscellaneous document to supplement the public record but failed to file amended Schedules A-P.¹²

The Committee failed to submit any evidence that it systematically contacted individuals who omitted required information when contributing to the campaign. *See* 11 C.F.R. § 104.7. The Committee did not show that it used best efforts to obtain, maintain, and submit the required information. Furthermore, the Committee failed to submit the required disclosure reports.

Accordingly, the Commission found reason to believe that Buchanan for President, Inc., and Angela Buchanan, as Treasurer, violated 2 U.S.C. § 434(b)(3)(A) by failing to collect and report contributor information.

¹² The miscellaneous document filed by the Committee covered numerous reporting periods and listed approximately 15,505 contributors along with occupation and name of employer information.